

HOWARD VAGNEUR

IBLA 96-151

Decided June 27, 2003

Appeal from a decision of the Acting State Director, Colorado State Office, Bureau of Land Management, dismissing a protest of a dependent resurvey. Group No. 1030, Colorado.

Affirmed.

1. Surveys of Public Lands: Dependent Resurveys

The Board will affirm a BLM decision dismissing a protest of a dependent resurvey when the protestant fails on appeal to establish by a preponderance of the evidence that BLM erred as a matter of fact in determining that original section corners and quarter-section corners are “existent.”

2. Surveys of Public Lands: Dependent Resurveys

The proper standard for BLM to apply in the course of a dependent resurvey is to consider a corner “existent” (or “found”) if such a conclusion is supported by substantial evidence. “Substantial evidence” is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Where a BLM conclusion that a corner is existent is based on evidence of an original bearing tree, record bearings and distances to other nearby corners, and its location on the east end of an ancient blaze line, that conclusion is supported by substantial evidence.

APPEARANCES: Howard Vagneur, pro se; Robert V. Abbey, Acting State Director, Colorado State Office, Bureau of Land Management, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Howard Vagneur (appellant) has appealed from an October 30, 1995, decision of the Acting State Director, Colorado State Office, Bureau of Land Management (BLM), dismissing his protest of a dependent resurvey (Group No. 1030, Colorado), to the extent that it had determined the location of three corners of section 2, T. 5 S., R. 92 W., Sixth Principal Meridian, Garfield County, Colorado. Specifically at issue are the northwest and southeast section corners and the east quarter corner of section 2.^{1/}

On September 19, 1992, BLM's Cadastral Survey office initiated a dependent resurvey of part of the north boundary and subdivisional lines of T. 5 S., R. 92 W., Sixth Principal Meridian, Garfield County, Colorado, including the northern and eastern boundaries of section 2, for the specific purpose of locating various public-land boundaries within the township. The resurvey, which was conducted by BLM cadastral surveyor George E. Allen, was concluded on March 24, 1994. Allen's resurvey field notes and plat were accepted by the Chief Cadastral Surveyor for Colorado, BLM, on May 23, 1995, and the plat was officially filed on July 6, 1995. Notice of the official filing was published in the Federal Register on July 19, 1995 (60 FR 37068).

The history of prior Federal surveys in the area was set out as follows in the Special Instructions for Allen's dependent resurvey:

J.B. Moore surveyed the 1st Standard Parallel South (south boundary) through Range 92 West and the 11th Auxiliary Guide Meridian West (west boundary) through Township 5 South in 1883. George E. Williamson surveyed the east and north boundaries in 1883. Frank P. Monroe resurveyed the north boundary and subdivided the

^{1/} The northwest section corner of section 2 is the corner common to secs. 2 and 3, T. 5 S., R. 92 W., and secs. 34 and 35, T. 4 S., R. 92 W., and is thus situated on the north boundary of T. 5 S., R. 92 W. The southeast section corner of section 2 is the corner common to secs. 1, 2, 11, and 12, T. 5 S., R. 92 W. The northeast section corner of section 2 (which is not directly challenged herein) is the corner common to secs. 1 and 2, T. 5 S., R. 92 W., and secs. 35 and 36, T. 4 S., R. 92 W.

The east quarter corner of section 2 is the corner roughly at the midpoint between the southeast and northeast section corners along the eastern boundary of section 2, T. 5 S., R. 92 W.

township in 1888. Alonzo H. Adams resurveyed the north boundary in 1911. John S. Knowles resurveyed a portion of the east boundary in 1941. James Pritchard dependently resurveyed a portion of the 11th Auxiliary Guide Meridian through Township 5 South in 1975.

George E. Allen dependently resurveyed a portion of the east boundary in 1989-90. George E. Allen dependently resurveyed a portion of the 11th Auxiliary Guide Meridian West, a portion of the north boundary, certain subdivisional lines, subdivided certain sections, and executed a metes-and-bounds survey of the Rifle Gap Reservoir Boundary in sections 7, 8, and 9 in 1990-91.

(Special Instructions Group 1030, Colorado, at 1.)

On June 1, 1995, following acceptance of BLM's 1995 dependent resurvey but prior to the official filing of the resurvey plat, appellant, who owns private land situated in the interior of section 2, filed a protest challenging BLM's approval of the resurvey.^{2/} Appellant generally claimed that the resurvey was "erroneous" to the extent that, in the face of "[l]ost survey corners," Allen had "fail[ed] to proportion the interior lines of Section 2" and instead mistakenly relied upon what he believed to be existent corners. (Protest, dated May 25, 1995, at 1.) Appellant asserted that this had resulted in a shift of "his interior lines and corners * * * some 125 feet N[orth] of the interior lines and corners as set by three different private surveyors," viz. Lawrence G. Marshall in 1974, David M. Poeschl in 1981, and Gary D. Berschauer in 1984.^{3/}

^{2/} It is undisputed that appellant owns a tract of contiguous private land described as the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and NE $\frac{1}{4}$ SW $\frac{1}{4}$, sec. 2. That tract is bordered along its northern and southern boundaries by subdivisional lines of the section which partially mark the boundary between private and public land within the section.

^{3/} Appellant also argued in his protest that Marshall's private survey had been accepted as "more correct" by a State court. (Protest at 1.) The record contains a copy of "Findings of Fact, Conclusions of Law, and Judgment" (Findings), dated June 1, 1989, rendered by the District Court for the Ninth Judicial District, County of Garfield, State of Colorado, in a proceeding entitled Vagneur v. Barner, No. 85CV221, and a copy of a "Reporter's Transcript" (Transcript) of a follow-up Apr. 30, 1993, hearing before the same court.

Appellant has not pursued this argument on appeal. Nonetheless, we note that the State court proceeding was essentially a private dispute between the Vagneurs and the Barners concerning the boundary between their private land tracts, in the interior of section 2. The disputed boundary constituted the southern boundary of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ section 2 (owned by the Vagneurs) and the northern boundary of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ section 2 (owned by the Barners). See Findings at 2-3. (continued...)

While appellant asserted in his protest that he had been adversely affected by BLM's 1995 dependent resurvey, he did not specify either how Allen had erred in the resurvey or how such error had affected him. His protest was so vague that it is not possible to determine what corners appellant considered to be "[l]ost" and what "interior lines and corners" have, as a consequence of BLM's resurvey, shifted to the north. Appellant also failed to make a point-by-point comparison of Allen's resurvey and the private surveys on which he relied. After addressing (as best she could) each of the issues raised and generally concluding that BLM's 1995 dependent resurvey had been "properly executed in strict conformity with the" Manual of Instructions for the Survey of the Public Lands of the United States, 1973 (BLM Technical Bulletin 6) (Survey Manual), the Acting State Director dismissed appellant's protest, and this appeal ensued.

After reviewing both appellant's protest and appeal documents, it appears that he objects to BLM's dependent resurvey because it placed corners such that three subdivisional lines within section 2 are in different places than he previously believed. That is, two northern and one southern boundaries of his private tract in the interior of the section shifted about 125 feet to the north of where he had believed them to be prior to the resurvey. These boundaries are defined, at least in part, by the subdivisional lines running east-west between the four sixteenth corners situated along the east and west section lines of section 2.^{4/} Appellant does not attack the sixteenth corners directly, but rather challenges two section corners and one quarter corner that are tied to the sixteenth corners and thus control their location.

^{3/} (...continued)

The court expressly eschewed resolving that dispute on the basis of whether Marshall's or any other private survey was correct, but rather simply decided, on the basis of the doctrine of adverse possession, that certain land along the disputed boundary (identified by Marshall's private survey) should be awarded to the Vagneurs. (Findings at 4; Transcript at 3-7.) :

"I just needed to find some line in non-productive ground that was a dividing line. And it seemed to me like the Anthony Survey was as good a place to start as any * * * -- not because it was so historically accurate or anything like that -- it just formed a convenient line to draw on the ground as between these two individuals and say, Okay, as between you two individuals, this is it. * * * And it approximately reflected what history had evolved between owners of land in this area."

(Transcript at 4.) The court confined its ruling to that particular boundary. Thus, the State court did not resolve any problems stemming from the Government's survey/resurvey of section 2 or any public/private-land boundary issues.

^{4/} A "sixteenth corner" lies roughly halfway between a section corner and a quarter corner. There are eight sixteenth corners in each section.

There is no doubt that the resurvey adversely affected appellant. It set the boundary between Federally-owned lands in lot 6, section 2 (situated in the northeastern part of the section), and his privately-owned lands to the south. By the same token, the resurvey also set the boundary between Federally-owned lands in lot 8, section 2 (situated in the southwestern part of the section), and his privately-owned lands to the north. The resurvey positioned both the south sixteenth and the north sixteenth corners on the line between sections 1 and 2. The boundaries between the Federally-owned lands and appellant's lands are determined by lines running across the section between those two sixteenth corners westerly to the south sixteenth and the north sixteenth corners on the line between sections 2 and 3. The effect of the resurvey appears to have been to place the boundaries farther north than previously thought, so that appellant was shown to own in part different property than previously thought. Appellant accordingly has standing to appeal from the denial of his protest against the resurvey. Compare, Ron Martin, 130 IBLA 238, 241-42 (1994); John W. Yeargan, 126 IBLA 361, 369 (1993); Wilogene Simpson, 110 IBLA 271, 277 (1989); O.R. Williams, 60 I.D. 301, 303 (1949).

In his brief statement of reasons for appeal (SOR), appellant contends that BLM improperly approved the 1995 dependent resurvey, specifically challenging only the northwest and southeast section corners and the east quarter corner of section 2, T. 5 S., R. 92 W. He argues that there was no remaining evidence of the original corner monuments, and that BLM had incorrectly "reconstructed corners or accepted reconstructed corners."^{5/} (SOR at 1.) Appellant argues that BLM's 1994 corners, which were reported to be re-establishments of the corners previously reestablished in 1888 by Frank P. Monroe, a U.S. Deputy Surveyor, when he resurveyed the north and subdivisional lines of the township in 1888, did not "match" Monroe's resurveyed corners. Id. Thus, he asserts that the corners were not properly reestablished in their true original positions, which undermines the validity of BLM's resurvey of the subdivisional lines of section 2 and thus its rejection of these lines as consistently surveyed by three private surveyors. Appellant therefore concludes:

If "You" do not have the corners in their forever fixed original positions, how do you know that the corners the private surveyors used are not correct[?] * * * It stands to reason[] that "Your" * * * corners not being in their forever fixed positions could cause your interior lines to be off. It is most likely, after all, that the Private Surveyors * * * have been right all along.

(Id. at 1-2.)

^{5/} Although appellant speculates that "there may be more corners not in th[eir] forever fixed original positions" as placed by BLM, he does not expressly challenge any other corners. (SOR at 1.)

We note that none of the three corners challenged by appellant directly affects the boundaries between his property and Federal lands. Those boundaries are directly affected by the north and south sixteenth corners on the line between sections 1 and 2 and the north and south sixteenth corners on the line between sections 2 and 3, none of which are challenged. However, appellant asserts that those corners and the lines they control are affected by other assertedly incorrect corners:

This now brings us to the issue of the Interior lines as set by “You” the BLM to determine the boundaries of BLM property, as you state. However, “You” have set interior corners in Section 2 based on corners which [obviously] are not forever fixed in their original positions as shown [elsewhere in the SOR.]

(SOR at 1.) For the sake of this decision, we shall presume that the sixteenth corners (evidently the “interior corners” appellant refers to) would have to be reset if appellant showed error in BLM’s 1992-94 location of the corners in question.

[1] Pursuant to the Act of March 3, 1909, as amended, 43 U.S.C. § 772 (2000), BLM, as the delegate of the Secretary of the Interior, is authorized to resurvey the public lands in order to reestablish the corners and thus the lines established by earlier official surveys. John W. Yeargan, 126 IBLA at 362.

A dependent resurvey is designed to retrace and reestablish the lines of the original survey, marking the boundaries of the legal subdivisions of the public lands, in their “true original positions.” Survey Manual, § 6! 4, at 145; see John W. Yeargan, 126 IBLA at 362. It therefore places the lines in the same position on the earth’s surface that they have occupied since the date of the original survey, thus protecting the bona fide rights of private landowners and their successors-in-interest, whose property boundaries are tied to the original lines, even when the original survey may have been poorly or erroneously executed. United States v. Doyle, 468 F.2d 633, 636 (10th Cir. 1972); see 43 U.S.C. § 772 (2000); Sweeten v. U.S. Department of Agriculture, 684 F.2d 679, 682 (10th Cir. 1982); Adams v. United States, 687 F. Supp. 1479, 1482-83, 1488-89 (D. Nev. 1988), aff’d in part, rev’d, vacated, and remanded in part on other grounds, 3 F.3d 1254 (9th Cir. 1993); John W. Yeargan, 126 IBLA at 362-63, 370.

We have long recognized that original lines are to be reestablished under a dependent resurvey by recovering or restoring the original corners by any of three methods, in descending order of importance. John W. Yeargan, 126 IBLA at 363. First, an “existent” or “found” corner can be recovered by finding evidence of the monument and/or its accessories. Survey Manual, § 5-5, at 130. Second, an “obliterated” corner, where there are no remaining traces of the monument or its

accessories, can be recovered where the corner's location has been perpetuated or where other acceptable evidence establishes its location. Survey Manual, § 5-9, at 130. Third, where a corner cannot be considered existent or obliterated based on substantial evidence regarding its location, it will be regarded as a "lost corner" to be restored by reference to one or more interdependent corners by the method of proportionate measurement. Survey Manual, §§ 5-20 and 5-21, at 133; James O. Steambarge, 116 IBLA 185, 191 (1990).

When a dependent resurvey is performed 100 years or more after the original survey, the location of original corners must be based on the "best evidence available of the positions of the original corners" at the time of the resurvey. Survey Manual, § 6-4, at 145; see J.M. Beard (On Rehearing), 52 I.D. 451, 453 (1928). An appellant who challenges a BLM dependent resurvey prior to the official filing of the resurvey plat bears the burden on appeal of establishing, by a preponderance of the evidence, that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. John W. Yeargan, 126 IBLA at 363.

In adjudicating this appeal, we will focus in succession on each of the three corners specifically attacked by appellant.^{6/}

Common Corner of Secs. 2, 3, 34, and 35 (Northwest Section Corner of Section 2)

Appellant disputes the northwest section corner of section 2:

"You" state that "all of the Monroe corners were found", but yet your Survey of May 23, 1995 does not match that of Frank P. Monroe dated Sept 18th, 1888 #743. "Your" field notes "clearly" show in several areas where you reconstructed corners or accepted reconstructed corners when "There is no remaining evidence of the original Corner Monument." One such corner is the Cor. Sec. 2, 3, 34, and 35. Monroe shows the West line of Section 2 running to the South West corner from the North West corner of Sec. 2, at S. 0 degrees

^{6/} The dissent believes that it is impossible, based on the present record, to determine whether two (the northwest section corner and the east quarter corner of section 2) of the three corners in question were properly resurveyed by Allen, and he would refer this case to an administrative law judge for a factfinding hearing. In addition, he would allow the administrative law judge to expand the inquiry "and make a determination regarding the survey of the other corners in the area." (Dissent at 309.) We believe there is substantial evidence in the record to support BLM's placement of the corners, that appellant has failed to meet his burden of proof, and that expanding the inquiry in this case to include "other corners in the area" is not justified.

13' West. "Your['] survey shows the West line shifting twice running at an angle approximately S. 1 degree 29' East. Obviously "your" reconstructed corner is not forever fixed in position according to the Monroe survey, and is invalid.

(SOR at 1.) Thus, by pointing out that the bearing of the western boundary of section 2 varies slightly from Monroe's 1888 description, appellant surmises that the northwest section corner must have been incorrectly located in the 1992-94 resurvey.

The northwest section corner was originally surveyed in August 1883 by George E. Williamson, along with the entire north boundary. The corner was resurveyed in 1888 by Monroe, in 1911 by Alonzo H. Adams, and in 1992-94 by Allen.

Williamson reported setting at the northwest section corner a "Sandstone 15 x 12 x 10 [inches] 10 [inches] in [the] ground marked with 4 notches on W[est] [and] 2 [notches] on E[ast] edges." (Williamson Field Notes at 87.) He raised a "mound of stone alongside," but made no mention of marking any bearing trees, evidently because he reported "leav[ing] timber" as he approached the corner from the west, along the north line of section 3, and did not report reentering timber until 21 chains eastwards past the corner, along the north line of section 2. Id. Continuing east along the northern boundary of section 2, Williamson also reported setting the north quarter corner and the northeast section corner of section 2. Id. at 87-88.

When Monroe resurveyed the north township boundary line in 1888 in connection with his subdivisional survey of the township, he reported being unable to find Williamson's northeast section corner of section 2 or any of the other corners "westerly" of that corner. (Monroe Field Notes at 255.) Accordingly, he sought to reestablish the entire line using Williamson's original corners at either end of the line (which he had recovered) and a general bearing of S. 89E 29' E. (close to Williamson's reported S. 89E 53' E.). Id. at 255-56. This work included reestablishing the northwest section corner of section 2, which was identified by setting a "sandstone 26 x 12 x 10 [inches] 15 [inches] in [the] ground marked with 2 notches on E[ast] and 4 notches on W[est] side." Id. at 261. He also raised a "mound of stone alongside." Id. In addition, he tied the monument to two bearing trees in the northwest and southwest quadrants, but not the northeast or southeast quadrants: "A pinyon tree 20 [inches in] diam[eter] bears S.W. 50 l[in]ks marked Sec[.] 3[.] T 5 S, R 92 W[.] A cedar tree 8 [inches in] diam[eter] bears N.W. 60 l[in]ks marked T 4 S, R 92 W, Sec[.] 34 BT." ^{2/} Id. at 261-62. He described the vegetation in the area of the northwest section corner only as "sage [and] sarvis

^{2/} Use of the letters "BT" denotes a "bearing tree."

brush” and reported crossing “over sagebrush and mesa * * * [with s]ome pinon[] and cedar” as he continued further east along the township line. Id. at 262. Monroe also reported setting the north quarter corner and the northeast section corner of section 2. Id. at 262-63.

When Adams resurveyed the north township boundary line in 1911, he reported finding a monument that he adopted as locating the original northwest section corner of section 2. The monument was described by Adams as a “sandstone 24 x 10 x 7 in[ches], properly m[arked], lying on the ground in [a] mound of stone.” (Adams Field Notes at 482-83.) That size was close to Monroe’s 1888 reported 26 x 12 x 10-inch sandstone, but not to Williamson’s original (1883) 15 x 12 x 10-inch sandstone. That is not surprising, as Monroe had been unable to locate Williamson’s original stone.

The sandstone Adams found in 1911 was located 6 links south of a point 81.52 chains from the accepted northeast section corner of section 2 on a bearing of S. 89E 42' W. That location was close both to Williamson’s reported 80 chains on a bearing of N. 89E 53' W. and Monroe’s reported 80 chains on a bearing of N. 89E 29' W.^{8/} Adams found two marked bearing trees: A “cedar, 7 in[ches] in diam[eter], bears N. 11E 50' W. 47 l[inks] dist[ant] m[arked] S[ec.] 34 BT. A pinon, 20 in[ches] in diam[eter], bears S. 57E 50' W., 1.10 ch[ains] dist[ant], m[arked] T 5 S R 92 S[ec.] 3 BT.” Id. at 483. The two bearing trees roughly agreed with Monroe’s reported bearing trees.

Adams accepted the location of the monument as the situs of the northwest section corner of section 2, but proceeded to remonument the corner with an iron post, after destroying the markings on the existing stone:

[S]et an iron post, 3 f[et] long, 3 in[ches] in diam[eter], 20 in[ches] in the ground with [a] mound of stone around it, * * * with brass cap m[arked] 1911 on N[orth], and T 5 S on S[outh] half, with T 4 S S[ec.] 34 in NW., R 92 W S[ec.] 35 in NE., S[ec.] 2 in SE., and S[ec.] 3 in SW quadrant[.]

(Adams Field Notes at 486.) In addition, Adams tied the monument to three bearing trees, including the two which he had recovered:

^{8/} We note that the Acting State Director stated, in her October 1995 decision, that “Adams found all of the Williamson corners” on the north township boundary line. (“Enclosure” (attached to Acting State Director’s Oct. 30, 1995, decision) at 1.) We believe that it is more accurate to say that Adams recovered Monroe’s monuments, which marked the corners originally established by Williamson.

A cedar, 7 in[ches] in diam[eter], bears N. 11E 50' W., 47 l[inks] dist[ant], m[arked] T 4 S R 92 W S[ec.] 34 1911 BT.

A pinon, 20 in[ches] in diam[eter], bears S. 57E 50' W., 1.10 ch[ains] dist[ant], m[arked] T 5 S R 92 W S[ec.] 3 1911 BT.

A pinon, 8 in[ches] in diam[eter], bears S. 28E 10' E., 50 l[inks] dist[ant], m[arked] T 5 S R 92 W S[ec.] 2 1911 BT.

No tree within limits in sec. 35 fit for marking.

Id. at 487.

In 1911, Adams also recovered the north quarter section corner and the northeast section corner of section 2. He reported destroying all monuments of those corners and reestablishing new monuments for those corners in the same locations. Id. at 482, 485-86.

When Allen resurveyed the north boundary line of the township in 1992-94, over 80 years after Adams, he failed to find the iron post Adams had set at the northwest corner and found evidence of only one of the three bearing trees that Adams had recovered and/or identified. What Allen found was the stump of the bearing tree in the southwest quadrant, which he described as follows: “A pinon stump, 24 in[ches] [in] diam[eter], bears S. 57E 50' W., 1.10 ch[ains] dist[ant] with no remaining scribe marks.” (Allen Field Notes at 4, emphasis added.)

Allen found (to the east) both the northeast section corner and the north quarter corner of section 2 still identified by Adams' 1911 iron posts with marked brass caps and tied to scribed bearing trees. (Adams Field Notes at 485-86.) The resulting bearings and distances from the north quarter corner and the northeast section corner to the northwest section corner identified by Allen in 1992-94 fairly closely matched Adams' 1911 report.^{9/} Allen also found (to the west) the north

^{9/} Allen reported it to be 41.55 chains from the north quarter corner of section 2 to the northwest section corner on a bearing of S. 89E 58' W. (Allen Field Notes at 3). Adams reported the distance as 40.02 chains on a bearing of N. 89E 50' W. (Adams Field Notes at 486).

Allen reported it to be a total of 81.57 chains from the northeast section corner to the northwest section corner: 41.55 chains on a bearing of S. 89E 58' W. from the northeast section corner to the north quarter corner; 20.01 chains on a bearing of S. 88E 58' W. from the north quarter corner to the west sixteenth corner on the line between sections 2 and 35; and 20.01 chains on a bearing of S. 88E 58' W. from that

(continued...)

quarter and northwest corners of section 3 as identified by Adams in 1911. ^{10/} There was also agreement with other nearby corners, viz. the west quarter and southwest section corners of section 2, which had been established by Monroe in 1888 and recovered by Allen in 1911. ^{11/}

Finally, Allen reported that his re-established northwest section corner of section 2 is situated “on the east end of an ancient blazed line, extending N. 85-½E W.,” which agrees almost exactly with Adams’ reported bearing of N. 85E 41’ W. for the northern boundary of section 3 that Adams reported in 1911 that he had blazed. (Allen Field Notes at 5; Adams Field Notes at 488.)

[2] Thus, while little evidence remained on the ground of the location of the northwest section corner of section 2, BLM identified a situs for the corner which closely matched Adams’ and Monroe’s record bearing and distance to other nearby corners (which were accepted). The fact that a corner stands in a place that is in proper relation to neighboring found section corners contributes to a finding that BLM’s determination that the corner is “existent” is supported by substantial evidence. See Stoddard Jacobsen v. BLM (On Reconsideration), 103 IBLA 83, 87 (1988). ^{12/} The blazed line also adds support to BLM’s determination that the corner is “existent.” Survey Manual, §§ 5-15 and 5-18, at 131-32; see Stoddard Jacobsen v. BLM, 97 IBLA 182, 194 (1987). It is well recognized that relatively minor

^{9/} (...continued)

west sixteenth corner to the northwest section corner. (Allen Field Notes at 3-4.) Adams reported the distance as 81.52 chains on a single bearing of N. 89E 50’ W. (Adams Field Notes at 483 and 486.)

^{10/} Allen found the north quarter corner of section 3 at 42.34 chains from the northwest section corner of section 2 on a bearing of N. 85E 37’ W. He found the northwest section corner of section 3 at 84.70 chains from the northwest section corner of section 2, on a bearing of N. 85E 37’ W. and then N. 85E 40’ W. (Allen Field Notes at 5-6.) Those bearings and distances closely matched Adams’ 1911 report: 42.36 chains and 84.72 chains, both on a single bearing of N. 85E 41’ W. (Adams Field Notes at 488-89.)

^{11/} Allen reported that the northwest section corner was 39.79 chains from the west quarter corner on a bearing of N. 1E 29’ W. (close to Monroe’s reported 40 chains on a bearing of N. 0E 13’ E.) and 79.05 chains from the southwest section corner on a bearing of N. 1E 07’ W. and then N. 1E 29’ W. (close to Monroe’s reported 80.60 chains, on a bearing of N. 0E 13’ E). (Allen Field Notes at 30-32; Monroe Field Notes at 280-81.)

^{12/} Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Stoddard Jacobsen v. BLM (On Reconsideration), 103 IBLA at 86 n. 6.

discrepancies in bearing and distance between older surveys undertaken near the beginning of the 20th century and resurveys performed near its end are not uncommon, particularly where, as here, the land traversed was marked, in whole or in part, by steep mountainous terrain. See Volney Bursell, 130 IBLA 55, 56-57 (1994). Further, that situs could be tied to the remains of a bearing tree, which was the same species and very close to Adams' reported size (with the added 4-inch diameter perhaps attributable to additional growth before the tree came down), and in the exact position he had reported it to be, relative to the corner. It is well accepted that the situs of a corner can be determined by reference to one or more remaining bearing trees. Henry O. Woodruff, 24 IBLA 190, 193 (1976); O.R. Williams, 60 I.D. 301 (1949); Walter G. Robillard & Lane J. Bouman, A Treatise on the Law of Surveying and Boundaries (Treatise) § 14.07 (5th ed. 1987), at 340-41 ("The bearing tree, as called for in the field notes, has equal dignity to the monument, and may be the best remaining evidence of the true and correct position of the original corner").

Allen plainly considered the northwest section corner of section 2 to be an "existent corner." ^{13/} The location of an existent corner can be identified "by verifying the evidence of the monument or its accessories." Survey Manual, § 5-5, at 130 (emphasis added). All that need be presented is "evidence" of the tree. Survey Manual, § 5-5, at 130. Thus, a bearing tree may be identified even where no scribing or other marks are found. See Mr. & Mrs. John Koopmans, 70 IBLA 75, 86-88 (1983); Survey Manual, § 4-87, at 122-23 ("The species, size and exact position of the bearing trees are of vital importance, as this data will generally serve to identify a bearing tree without uncovering the marks"); see Treatise at 341.

Our decision in Longview Fibre Co., 135 IBLA 170, 177-79 (1996), stands for the proposition that the pattern of location of several unmarked trees (or, certainly, just the location of a single tree) relative to a purported corner point, even if it very closely matches the record, will not alone suffice to establish that the trees are the original bearing trees, thus confirming the situs of the corner. Rather, there must be "some evidence corroborating that the trees are the original bearing trees." Id. at 179 (citing O.R. Williams, 60 I.D. 301 (1949)). However, we also recognized in Longview Fibre that the "need for corroborative evidence is * * * in direct proportion to the uncertainty [regarding the bearing trees]." 135 IBLA at 180 (quoting from Survey Manual, § 5-6, at 130). We found no such corroborative evidence in Longview Fibre. See 135 IBLA at 179-81. We find sufficient evidence here.

^{13/} An "existent corner" is one whose position can be identified by verifying the evidence of the monument or its accessories, by reference to the description in the field notes, or located by an acceptable supplementary survey record, some physical evidence, or reliable testimony. Survey Manual § 5-5 at 130.

We are persuaded that BLM correctly identified the “pinon stump” as a remnant of the original bearing tree because, having reliably determined the likely situs of the northwest section corner of section 2, given its record ties to the other surveyed corners to the east, west, and south, which are nowhere disputed, the stump, which is of the requisite species and size, can be tied very closely by record bearing and distance to this corner. Further, this evidence, which establishes the harmonious relationship of the corner, determined on the basis of the stump, to other known corners is substantial evidence that BLM has properly reestablished the original corner. See O.R. Williams, 60 I.D. 301 (1949). We think that the facts in this case amply distinguish it from Longview Fibre.

In challenging BLM’s northwest section corner of section 2, appellant argues only that Allen’s reported tie to the southwest section corner of section 2 of 79.05 chains on a bearing of S. 1E 29' E. and then S. 1E 07' E. differs from Monroe’s reported tie of 80.60 chains on a single bearing of S. 0E 13' W. (SOR at 1.) We are not disturbed by the relatively slight discrepancies (1.55 chains and, at most, 1E 42'), and find them insufficient to undermine BLM’s location of the northwest section corner.

The dissent appears to emphasize that Adams’ 1911 notes placed the northwest section corner of section 2 at 81.52 chains from the northeast section corner of section 2, while Allen’s 1992-94 notes place the distance at 81.57 chains. (Dissent at 296.) The dissent also states that Allen’s “monument is 0.9 chains from the bottom of the dry gulch the 1911 survey notes describe as being 0.50 chains away.” (*Id.*) Adams’ 1911 notes refer to a dry gulch at 0.50 chains on a course of S. 10E W. (Adams Survey Notes at 488.) Allen’s 1992-94 notes refer to a dry gulch at 0.79 chains (not 0.9 chains) on the same course S. 10E W. (Allen Survey Notes at 5.) The dissent states that the “record contains no evidence that Allen attempted to reconcile these differences.” (Dissent at 296.)

The first difference (81.57 chains minus 81.52 chains=0.05 chains, or 3.3 feet) is plainly de minimis, considering the wooded and mountainous nature of the intervening lands. The second difference (0.29 chains, or 19.14 feet) is not alarming, in view of the fact that (as discussed in more detail below) topographical calls such as a dry gulch are not utilized to provide precision, but instead merely to provide general descriptions of the area in which corners are found. Allen’s corner is consistent with the stump, the tree line blazed by Adams in 1911 and the ties to the neighboring corner, which, in toto, is the substantial evidence supporting BLM’s conclusions. ^{14/}

^{14/} As we stated in Stoddard Jacobsen v. BLM (On Reconsideration), 103 IBLA at 86 n.7:

“Thus, in an appeal from a survey decision, an appellant may be able to show that its placement of a disputed corner location is supported by substantial evidence.
(continued...)

We conclude that appellant has failed to establish by a preponderance of the evidence that BLM erred in its reestablishment of the northwest section corner of section 2 as an “existent” or “found” corner.

Common Corner of Secs. 1, 2, 11, and 12 (Southeast Section Corner of Section 2)

Appellant states as follows concerning this corner: “Another corner that may not be in [its] position is the SE corner of Section 2, which is mentioned in the Monroe notes to be North of ‘Your’ SE corner and again [t]here is no remaining evidence of the original corner and ‘you’ did not reconstruct this corner.” (SOR at 1.)

The disputed southeast section corner of section 2 was originally surveyed by Monroe in 1888 during the course of his subdivisional survey of T. 5 S., R. 92 W. It was resurveyed by Allen in 1992-94. Monroe reported setting a “sandstone 18 x 16 x 11 [inches] 10 [inches] in [the] ground marked with 5 notches on S[outh] and one on E[ast] edges,” 80 chains on a north bearing from the newly established SE corner of section 11. (Monroe Field Notes at 252.) He also “[r]aise[d a] mound of stone alongside” and tied the monument to two bearing trees: “A cedar tree 14 [inches] [in] diam[eter] bears S 5E W 91 l[inks] [distant] marked T 5 S R 92 W S[ec.] 11 BT. A cedar tree 12 [inches] [in] diam[eter] bears N 13E W 78 l[inks] [distant] marked T 5 S R 92 W Sec[.] 2 BT.” *Id.* at 252-53. He also reported that the southeast section corner was 80.30 chains from his reestablished northeast section corner of section 2 on a bearing of S. 0E 12' W. *Id.* at 265-66.

When Allen resurveyed the east section line of section 2 (the line running between the northeast and southeast section corners), he found what he concluded was a “careful and faithful perpetuation” of Monroe’s original southeast section corner by P.C. Thurmond, a Garfield Deputy County Surveyor in 1915, 27 years after Monroe’s survey. He found it “monumented with a cedar post, 3x3 in[ches] firmly set, projecting 15 in[ches] above the ground, m[arked] with 1 groove on the N[orth] and E[ast] faces, and 5 grooves on the S[outh] and W[est] faces.” (Allen Field Notes at 15.) According to Allen’s notes, that conformed to a plat prepared by Thurmond (not in the record) that “indicate[d] a cedar post in place for the cor[ner] of secs. 1, 2, 11, and 12.” *Id.* The record does not contain any evidence concerning the Thurmond survey. Nevertheless, there is adequate evidence to support BLM’s finding that the corner is “existent.” Allen found that the post was tied to the remains of one of Monroe’s original bearing trees: “A stump, 13 in[ches] [in] diam[eter], 4 f[et]t high, bears S. 16E W., 110 l[inks] dist[ant], m[arked] with a B visible along with

^{14/} (...continued)

However, as long as BLM’s placement of the corner location is also supported by substantial evidence, appellant’s showing is to no avail. To prove error in the BLM decision, appellant must demonstrate by a preponderance of the evidence that BLM’s placement of the corner is wrong.”

other illegible scribe marks. (record: S. 5E W., 91 l[inks] dist[ant]).” (Allen Field Notes at 15.) The existence of the remains of an original bearing tree that is still partially scribed is sufficient by itself to render the corner existent, and thus properly accepted.

Appellant contends only that Allen’s SE corner “may not” be in its true original position, arguing that there is no remaining evidence of the original corner. (SOR at 1.) He thus seems to discount the remains of what Allen concluded was an original bearing tree. However, appellant does not explain the fact that the tree, while no longer standing and reduced to a stump, still bears a visible “B,” which Allen apparently concluded was part of the inscribed “BT” reported by Monroe. He also fails to address the fact that the tree is very close to the size and near the position reported by Monroe.

Appellant asserts simply that Monroe’s original corner is actually “North” of Allen’s corner. (SOR at 1.) He provides no convincing evidence supporting his assertion. In the absence of such evidence, appellant’s position amounts to mere speculation. We conclude that appellant has failed to establish by a preponderance of the evidence that BLM erred in its reestablishment of the SE corner of section 2 as an “existent” or “found” corner.

Quarter Section Corner Between Secs. 1 and 2 (East Quarter Corner of Section 2)

Appellant stated as follows concerning this corner:

Another such corner is the 1/4 Sec. Cor. of Sec. 1 & 2 perpetuated by Mr. James Sexton, a private surveyor, which was accepted by “You” without verification as to [its] authenticity (ie: carbon testing, etc.) and whether the corner is fixed in its original position. Again this corner has no remaining evidence of the original corner Monument and again it does not match the Monroe Survey. The Monroe survey shows the East line of Section 2 heading South at 0 degrees 12' W. to the S.E[.] Corner from the N.E. corner of Section 2. “Your” survey heads south from the NE corner at 9 degrees 24' to the Sexton corner and then South again to the SE corner of Section 2. “Clearly” this perpetuated corner by Sexton is not even close to the Monroe line and therefore not forever fixed in its original position, and not a valid corner.

(SOR at 1.)

The disputed east quarter corner of section 2, which is located along the eastern boundary of the section, was originally surveyed by Monroe in 1888 during the course of his subdivisional survey of T. 5 S., R. 92 W., Sixth principal meridian,

Garfield County, Colorado. It was later resurveyed by Allen in 1992-94. Monroe reported “[s]et[ting] [a] sandstone 16 x 12 x 4 [inches] 8 [inches] in [the] ground marked $\frac{1}{4}$ on [the] W[est] face for $\frac{1}{4}$ sec[tion] cor[ner],” 40.30 chains, on a bearing of S. 0E 12' W., from his reestablished NE corner of section 2. (Monroe Field Notes at 265.) He also “[r]aise[d] [a] mound of stone alongside” and tied the monument to a “cedar tree 14 [inches] [in] diam[eter] [which] bears N 85E E 20 l[inks] [distant, and is] marked $\frac{1}{4}$ S[ec.] BT.” Id. at 265-66. He also reported that the east quarter corner was 40 chains, on a bearing of S. 0E 12' W., from the southeast section corner of section 2. Id.

When Allen resurveyed the east section line of section 2 (the line between the northeast and southeast sections corners of section 2) over 100 years later, he failed to find Monroe’s sandstone monument marking the location of the original east quarter corner. However, he did find what he initially concluded was a “careful and faithful perpetuation” of Monroe’s original corner by James W. Sexton, a private surveyor, in 1987, 99 years after Monroe’s survey. (Allen Field Notes at 18.) Allen specifically found the east quarter corner “monumented with an iron post, 2- $\frac{1}{2}$ in[ches] [in] diam[eter], firmly set, projecting 8 in[ches] above the ground, with brass cap m[arked] * * * T5S R92W,” immediately below which was a “2” and a “1” separated by a vertical line. Id. Both the brass cap and yellow plastic caps, which were nailed to two nearby trees, bore marks attributing them to Sexton. The corner had unquestionably been established by Sexton.

Allen stated that Sexton’s post was tied to the original bearing tree: “A forked juniper, 13 in[ches] [in] diam[eter], bears N. 85E E., 30 l[inks] dist[ant], m[arked] $\frac{1}{4}$ S BT [(record: N. 85E E., 20 links distant)].” ^{15/} (Allen Field Notes at 18.) The existence of the original bearing tree, which is still fully scribed, is sufficient to render the corner “existent” and thus properly accepted.

Appellant asserts that Allen’s east quarter corner is not in its true original position, claiming that there is no remaining evidence of the original monument. (SOR at 1.) He fails to raise any challenge to the bearing tree, initially recovered by Sexton and later by Allen, which is inscribed “ $\frac{1}{4}$ S BT,” exactly as reported by Monroe. Nor does he object to the work undertaken by Sexton, and accepted by Allen, in

^{15/} The record contains a copy of the “Colorado Land Survey Monument Record,” dated July 23, 1987, and signed by Sexton, which reported that he had “[f]ound [the] cedar tree marked $\frac{1}{4}$ S BT” and depicted the situs of the tree at its record bearing and distance from his remonumented corner. He also tied the corner to two other trees, a juniper and a pinyon pine, in the NW and SW quadrants. It appears that Allen, who accepted Sexton’s corner, was simply mistaken in referring to the original bearing tree as a “forked juniper” instead of a “cedar.”

remonumenting the corner, based on extrapolating back from the found bearing tree. We discern no error. ^{16/}

The disagreement of the corner with record calls in the original survey does not compel a conclusion that the corner is not an “existent” or “found” corner. Record bearing and distance will not determine the location of an original corner in the face of evidence regarding the original monument and/or its accessories; lines marked on the ground by monuments and/or accessories stand highest in the determination of the true boundaries of conveyed land, ranking above statements of directions and distances. United States v. Weyerhaeuser Co., 392 F.2d 448, 451 (9th Cir. 1967), cert. denied, 393 U.S. 836 (1968); see Robert J. Wickenden, 73 IBLA 394, 396 (1983). This appears to be an example of a case where an early surveyor was simply in error in his reported bearings and distances. The evidence supports BLM’s determination that the corner is an “existent” or “found” corner.

The dissent emphasizes differences between topographical calls in Monroe’s 1888 notes and Allen’s 1992-94 notes. The Survey Manual provides this rule concerning the use of topography when attempting to restore a missing corner:

Misapplication [of topographic calls] may be avoided by applying the following tests:

- (1) The determination should result in a definite locus within a small area.
- (2) The evidence should not be susceptible of more than one reasonable interpretation.

^{16/} There is no indication that Marshall or Poeschl ever resurveyed the east quarter corner; their plats indicate to the contrary that they completely bypassed it. Unlike other section corners and quarter corners along the exterior lines of section 2, there is no symbol identifying the location of any kind of monument at the east quarter corner on their private survey plats. See Acting State Director’s Oct. 30, 1995, decision, Enclosure at 2.

Berschauer reported the discovery of a “stone ¼ corner,” along with the “B.T.,” at the location of Allen’s east quarter corner, which bearing tree he then tied to that corner at a distance of 38.27 feet, on a bearing of N. 82E 22’ W. (Berschauer Survey Plat.) However, he discounted the stone’s location as the original situs of the corner, stating “that it was not set in a manner consistent with the notes” and speculating that that “could mean it has moved from where it was originally set.” Id. Nevertheless, Berschauer corroborates the situs of the original bearing tree, which he does not dispute, and thus supports BLM’s location of the east quarter corner.

(3) The corner locus should not be contradicted by evidence of a higher class or by other topographic notes.

The determination of the original corner point from even fragmentary evidence of the original accessories, generally substantiated by the original topographic calls, is much stronger than determination from topographic calls alone.

Boise Cascade Corp., 115 IBLA 327, 332-33 (1990) (quoting Survey Manual, § 5-16, at 132.) Prior decisions of this Board have recognized and applied the rule stated by the Survey Manual that topographic calls should focus on a definite, small area, such as an old fence, if they are to have utility in retracing a missing corner. Boise Cascade Corp., 115 IBLA at 333; see Alfred Steinhauer, 1 IBLA 167 (1970).

Here we have “evidence of the original accessories,” in the form of a bearing tree, that is uncontradicted “by evidence of a higher class.” Although the distances to the topographic calls in the 1888 and 1992-94 survey notes unquestionably vary (by roughly the same distance that the distances to the corner itself vary, about 5 to 6 chains), the topographic calls actually do corroborate the corner, in that they both allude to the existence in the vicinity of a drainage ditch that was crossed twice in proceeding from the southeast section corner to the east quarter corner of section 2. Thus, the finding of the bearing tree, coupled with the 1888 surveyor’s references to the ditch in the area, is adequate to conclude that the corner is “existent” or “found.”

The dissent states that “Allen accepted as a perpetuation of the quarter corner common to sections 1 and 2 a monument set by a registered surveyor not employed by the Cadastral Survey” (Dissent at 303), referring to the fact that James Sexton, not Allen, remonumented the corner. Thus, the record contains evidence showing that James Warren Sexton (Registered Land Survey No. 16842) “[s]et 3" brass cap in steel pipe w/ stone mound” on July 17, 1987, “from existing bearing tree” on a bearing of N. 85E E. at a distance of 19.8 feet.” (Colorado Land Survey Monument Record No. 028147.) Further, Allen expressly described in his notes what type of monument he found there, viz.,

[t]he 1/4 sec. Cor. of sec. 1 and 2, monumented with an iron post,
2½ ins. diam., firmly set, projecting 8 ins. above the ground, with brass
cap mkd.

T5S R92W
2 * 1
16842

(Allen Field Notes at 18.)

It is not clear whether Sexton found the original stone monument in 1987 when he remonumented the corner. However, the absence of the original monument in 1987 (or for that matter in 1992-94) is immaterial, as the correctness of BLM's acceptance of the corner as re-monumented by Sexton stands or falls on whether BLM found adequate evidence of the corner's original position. As discussed above, we conclude that it did, in the form of the bearing tree.

We, thus, conclude that appellant has failed to establish, by a preponderance of the evidence, that BLM erred in concluding that the east quarter corner of section 2 was an "existent" or "found" corner.

Appellant challenges the accuracy of BLM's resurvey on the basis that it results in parcels that are smaller than 40 acres, claiming this to be "a clear indication that 'You' have not found 'all of the corners of the Monroe Survey' and that 'Your' corners are not forever fixed in their positions." ^{17/} Of course, the size of the sections and

^{17/} Allen's location of the southeast section corner and east quarter corner along the eastern boundary of section 2 has resulted in a line which is at substantial variance, in certain respects, from Monroe's reported boundary. Although the total distance reported by Allen (79.84 chains) is close to Monroe's original reported distance of 80.30 chains, Allen also reports an initial bearing of S. 9E 24' W., from the northeast section corner of section 2 to the east quarter corner of section 2, followed by a bearing of S. 6E 49' E. to the southeast section corner, neither of which is close to Monroe's reported uniform bearing of S. 0E 12' W. Further, the initial distance of 32.97 chains along the eastern boundary diverges markedly from Monroe's reported 40.30 chains.

The dissent alludes to a 6-chain (396-foot) "difference in a one mile traverse" (Dissent at 304), evidently referring to the 6.87-chain (453-foot) difference in the record distances between the southeast section corner of section 2 and the east quarter corner of section 2 reported by Monroe in 1888 (40.00 chains) and Allen in 1992-94 (46.87 chains). This difference undoubtedly exists. The overall effect is that the northern half of section 2 (particularly along the eastern boundary and for some distance into the interior of the section) is foreshortened, while the southern half is elongated, and that the eastern boundary is considerably crimped at the dividing point between the two halves. See Allen Survey Plat; Berschauer Survey Plat. In addition, the quarter quarter sections in the eastern half of section 2 are less than 40 acres.

Nonetheless, since we conclude that BLM's locations of the southeast section corner and east quarter corner are proper, as being in accordance with the original survey, neither BLM nor this Board has the authority to alter their location in order to render the overall section more regular.

subsections is determined by where the surveyor placed the corners on the ground, not the other way around. The record supports BLM's 1992-94 findings regarding the location of those corners. In view of the practicalities of attempting to "draw" straight lines on the curved surface of the earth, it is unrealistic to expect that all sections and subsections will be regular. The fact that some subsections are bigger or smaller than might be expected does not suggest that BLM failed to identify the corners in this case.

Appellant also notes that "there may be more corners not in [their] forever fixed original positions and as reconstructed by 'You'." Absolutely no proof is proffered in support of that statement. The burden of proof is on one challenging a survey to demonstrate by a preponderance of the evidence that BLM committed errors in its resurvey. There is adequate evidence in the existing record to support BLM's conclusions as to the corners challenged by appellant. Appellant has not met his burden of establishing error in BLM's decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

Administrative Judge Mullen Dissenting:

In the following paragraphs I set out a detailed discussion of the evidence that has caused me to deem it necessary to dissent. When reviewing the record to determine how Allen examined the physical evidence and field notes for the prior surveys to determine the location of the corners set during the prior surveys, I came to the conclusion that his survey was not conducted in a manner consistent with the directives set out in the Manual of Surveying Instructions (1973) (Survey Manual). Corners appear to have been set where Allen thought they should be, not where they had been set during the prior surveys. The comparison of the record of the prior surveys and Allen's resurvey reveal too many unexplained discrepancies and unresolved questions. The record following completion of Allen's resurvey is best described as an effort to defend Allen's conclusions by discrediting or summarily dismissing the evidence presented by others, rather than an attempt to resolve legitimate questions and develop a logical explanation for the discrepancies.

At the very least, the survey notes of a dependent resurvey should contain an explanation of why the calls and distances to natural and man made objects do not agree with those set out in the prior survey notes. In many cases the prior calls and distances are completely ignored. Others are selectively chosen to support what appears to be a preconceived conclusion. The number of unexplained discrepancies is sufficient that I have concluded that an error has been committed.

The Secretary of the Interior is authorized to determine what lands are public lands and what public lands have been or should be surveyed. The Secretary also has authority to extend or correct the surveys of public lands and make resurveys to reestablish corners and lines established by earlier official surveys. John W. Yeargan, 126 IBLA 361, 362 (1993); Elmer A. Swan, 77 IBLA 99 (1983); see 43 U.S.C. §§ 2, 52, 751-53 (2000). In this instance, the Department sought to identify the boundaries of certain public lands. To achieve that end, BLM conducted a dependent resurvey.

A dependent resurvey is conducted to restore the original conditions of a prior official survey. It is based, first, upon identified existing corners of the original survey and other recognized acceptable points of control and, second, upon the restoration of missing corners by proportionate measurement, in harmony with the record of the original survey. Survey Manual at § 6-4 at 145, §§ 6-25 through 6-32 at 149-151. The cadastral surveyor's primary responsibility when conducting a dependent resurvey is to act as a "detective" who gathers all available information and uses his best effort to determine the location of all the original corners. Paul Chabot, 132 IBLA 371, 376 (1995); Theodore J. Vickman, 132 IBLA 317, 321 (1995). The "detective" surveyor must gather all of the evidence related to the initial survey and retrace that survey

to find where the original surveyor placed the monuments. It is not his job to remonument the corners where they should have been. He must remonument them in the same place his predecessor placed them. To this end, the most important evidence the one doing a dependent resurvey has is the notes taken during the course of the original survey. If any of the descriptions in the original survey appear to be incorrect or fail to agree with his results, the surveyor undertaking a resurvey has a duty to attempt to ascertain and fully explain why those discrepancies exist. Any failure to undertake this exercise gives rise to serious questions regarding whether the corners were remonumented where they were originally located or where the surveyor thought they should be.

Notations of physical features found in the original survey notes cannot be summarily dismissed merely by calling them unimportant or of little consequence. If those features were mentioned in the original survey, it was because the surveyor believed them to be sufficiently important as a guide to those seeking the location of his corners that he spent the time and effort to measure angles and distances and then transcribed those readings into the permanent record of what he had done.

With the purpose of a dependent resurvey in mind, I will now set out in detail some of the disturbing inconsistencies and unanswered questions mentioned earlier.

Common Corner for Sections 34 and 35, T. 4 S., R. 92 W.
and Sections 2 and 3, T. 5 S., R. 92 W., 6th Principal Meridian

The First Survey

The northern boundary (including this corner) of Township 4 South, Range 92 West, was initially surveyed by Williamson in 1883. His survey notes state that at the corner common to sections 34, 35, 2, and 3, he “[s]et Sandstone 15 x 12 x 10. 10 in ground marked with 4 notches on W & 2 on E edges for corner to Secs. 2, 3, 34 & 35. Raise mound of stone alongside. Pits impracticable.” There is no mention of having established any other accessories, such as bearing trees. (Williamson Field Notes at 87.)

The Second Survey

In his survey notes for his 1888 survey of the subdivision of T. 5 S., R. 92 W., Monroe states that, when surveying the boundary between sections 1 and 2, he proceeded northerly from the corner common to sections 1, 2, 11, and 12, but was

[n]ot finding any sign of corner on N [boundary] line and by diligent search westerly not finding any corners. I proceed to reestablish the N. [boundary] of [Township] 5 S, R 92 W. as follows. From corner to

[Townships] 4 & 5 S Ranges 91 & 92 W I went W. on a random line setting temp. 1/4 & sec. cor. and at 6 miles 2.20 [chains]. I intersect the guide meridian 4.28 [links] S of corner to [Townships] 4 & 5 S. [Ranges] 92 & 93 W. thence S 89° 29' E on a true line between secs. 6 & 31.

(Monroe Field Notes at 255-56.) Proceeding easterly on the boundary between townships 4 and 5 S., R. 92 W., he remonumented the corners and quarter corners along that boundary. His field notes describe the monument he set at the corner common to sections 2, 3, 34, and 35 as follows:

Set sandstone 26 x 12 x 10 15" in ground marked with 2 notches on E and 4 notches on W side for cor. to secs 2. 3. 34. 35[.] Raise mound of stone alongside[.] A pinyon tree 20" diam bears S.W. 50 [links] marked Sec 3 T 5 S. R 92 W[.] A cedar tree 8" diam bears N.W 60 [links] marked T 4 S. R 92 W., S 34 BT.

(Monroe Field Notes at 261-62.)

The Third Survey

A dependent resurvey was conducted by Adams in 1911. In that portion of his field notes describing his initial survey (intended to locate existing corners) he stated that when running a course on a bearing S. 89E 42' W., 81.52 chains from the corner of sections 1, 2, 35, and 36, his line fell "6 [links] N. of cor. of secs. 2, 3, 34 and 35." (Adams Field Notes at 482-83.) He described the monument as "a sandstone, 24 x 10 x 7 ins., properly mkd., lying on the ground in a mound of stone." Id. at 483. He found a cedar 7 inches in diameter bearing "N. 11E 50' W. 47 [links] dist. mkd. S 34 B T. A pinon, 20 ins. in diam., bears S. 57E 50' W., 1.10 chs. dist., mkd. T 5 S R 92 S3 B T." Id. Adams reestablished the corner by destroying "the markings on this stone, and in place of it Set an iron post, 3 ft. long, 3 ins. in diam., 20 ins. in the ground with mound of stone around it." Id. at 486. A brass cap marked "1911" on the north, and "T 5 S" on the south half, with "T 4 S S 34" in the northwest quadrant, "R 92 W S 35" in the northeast quadrant, "S 2" in the southeast quadrant, and "S 3" in the southwest quadrant, was mounted on the post. Id. In his field notes, Adams noted that from the corner a "cedar, 7 ins. in diam., bears N. 11E 50' W. 47 [links] dist. mkd. T 4 S R 92 W S 34 1911 B T. A pinon, 20 ins. in diam., bears S. 57E 50' W., 1.10 chs. dist., mkd. T 5 S R 92 W S 3 1911 B T. A pinon, 8 ins. in diam., bears S. 28E 10' E., 50 [links] dist., mkd. T 5 S R 92 W S 2 1911 B T." Id. No suitable tree was found in section 35. Id.

The Fourth Survey

In the 1992-94 dependent resurvey conducted by Allen, he reset the corner common to sections 2, 3, 34, and 35. His field notes give the following description of what he found and what he did.

The cor. of secs. 2, 3, 34, and 35 determined from the remains of the original bearing trees; there is no remaining evidence of the original cor. monument.

A pinon stump, 24 ins. in diam., bears S. 57° 50' W., 1.10 [chains] dist., with no remaining scribe marks.

(Field Notes of Dependent Resurvey Under Group 1030, Colorado (Allen Field Notes), at 4.)

As noted above, when Monroe conducted his resurvey of the northern boundary of T. 5 S., R. 92 W. in 1888, he did not find any of the other monuments on the boundary between the townships erected by Williams during the course of his 1883 survey, except the northeast corner of T. 5 S., R. 92 W. As a result, Monroe set his own monuments along this boundary, including the monument for the corner common to sections 2, 3, 34, and 35. This resurvey, with all new monuments, may well explain why two sets of monuments were found during the subsequent surveys, and is probably one of the major reasons for the subsequent independent survey of the northwestern portion of T. 5 S., R. 92 W.

The survey notes for Adams' 1911 survey describe two sets of monuments. He found a marked sandstone generally corresponding to earlier descriptions and destroyed it. The problem is — there is no way to tell which monument (Williamson's or Monroe's) was destroyed. Adams erected a 3" diameter iron rod at the corner of sections 2, 3, 34, and 35 that he selected as the true corner, and built a stone mound around the rod. Three trees were marked as accessories.

An "existent" corner is defined as "one whose position can be identified by verifying the evidence of the monument or its accessories, by reference to the description in the field notes, or located by an acceptable supplemental survey record, some physical evidence, or testimony." Survey Manual, § 5-5 at 130.

In the 1992-94 resurvey now under consideration, Allen did not find the iron rod or the rock cairn or any of the three marked bearing trees. He relies solely upon a single unmarked stump that Allen deemed to be at "the proper distance" from the corner — that is, where he thought it should be. However, there is no other evidence that this

stump is a bearing tree, or, if it is, which of the three bearing trees it is. No evidence is offered regarding any evidence of the other two bearing trees, and the only conclusion that can be drawn is that there was absolutely no evidence that a tree existed at a point that would correspond with the proper location of the other bearing trees. Were the stumps uprooted and the holes filled in?

In attempting to consider the reliability of the placement of the corner, based on an unmarked stump, I reviewed Adams' 1911 survey notes and compared the observations recorded in those notes with the observations in the Allen notes. The notes of the 1911 survey describe going west from the corner common to sections 1, 2, 35, and 36 along the boundary between sections 2 and 35 and entering heavy timber at 70.95 chains. (Adams Field Notes at 485-86.) The traverse was described as being "over mountainous land" and "through heavy timber." *Id.* at 485. He found the corner at 81.52 chains from the corner common to sections 1, 2, 35, and 36.

Allen's monument is 81.57 chains from that corner. His monument is 0.79 chains from the bottom of the dry gulch the 1911 survey notes describe as being 0.50 chains away. The record contains no evidence that Allen attempted to reconcile these differences. As a result, it is difficult to conclude that a single stump having absolutely no markings, located in an area described in the notes of the previous survey as being in heavy timber, is "substantial evidence" of the location of the corner. There is no explanation of the reason this stump was accepted while he rejected a tree with a blaze, but no legible scribe marks, because he did not believe that there was sufficient evidence to establish that the tree was a bearing tree. (Allen Field Notes at 16.) The weight properly given to unmarked stumps was addressed in Longview Fiber Co., 135 IBLA 170, 179 (1996):

Thus, there is good reason to believe that, in 1983 and thereafter, there were or had been any number of fallen or logged trees in the areas where the two corners are found and that a number of different groupings of such trees might, at one time, have been identified that would match the record, either exactly or very closely. The fact that any one grouping was in fact identified did not necessarily render it the original set of bearing trees identified by the Trutches in 1855.

This reality is reflected in the rule that the pattern of trees will not alone suffice to identify the location of either of the original corners, in the absence of some evidence corroborating that the trees are the original bearing trees. See O.R. Williams, 60 I.D. 301 (1949).

In this case there was no “pattern of trees.” The only evidence was a single unmarked stump in an area previously described as having been heavily timbered. There was no explanation why this particular unmarked stump was deemed to be a bearing tree or why it was a particular bearing tree and not one of the other two. The logical conclusion seems to be that it was where Allen thought it should be. A better explanation of the reason for accepting the unmarked stump, and further corroborating evidence supporting the conclusion that the stump was the bearing tree scribed during the course of the original survey, is necessary. Further, nothing is offered to explain why the 3" diameter iron rod corner monument was missing. Was it washed out? Was it intentionally destroyed? This total lack of any explanation of the failure to find the corner, the lack of meaningful corroborative evidence supporting the chosen location of the corner, and the failure to address any of the discrepancies between the calls to natural monuments in the two surveys are significant unresolved factual issues which cannot be determined based on the record now before the Board.

The majority opinion misstates my concern regarding the evidence. I am not concerned that the distance between the unmarked tree and the place the monument was erected varied by 3 feet. I do not make reference to this or any other call or distance stated in the original survey to single out a specific discrepancy. There are unexplained discrepancies in every instance. I make reference to those notations in the original survey to highlight the glaring absence of any attempt on Allen’s part to reconcile the bearings and distances from ties to natural objects during the course of the resurvey, and the subsequent offhand dismissal of Vagneur’s reference to those discrepancies. The majority continues this offhanded dismissal of any contradictory evidence as unimportant by choosing the least important, calling it de minimis, and summarily dismissing other inconsistencies as if they have no meaning by relegating them to footnotes containing no explanation of differences. See, e.g., footnotes 8, 9, and 10 in the lead opinion.

In a reaching attempt to find some additional support for their conclusion, the majority points to a reference to a series of blazes. However, the blazed trees are in an area that has had at least three official surveys and many unofficial surveys. I also quote the statement in Stoddard Jacobson v. BLM (On Reconsideration), 103 IBLA 83, 86 n.7 (1988), noted in footnote 13 of the majority opinion, but with somewhat different emphasis: “As long as BLM’s placement of the corner is also supported by substantial evidence, appellant’s showing is to no avail.” (The emphasis is mine.) The location of the corner chosen by BLM is supported by a blazed line in an area where there are many blazed lines and by a stump in a heavily forested area. A single stump with absolutely no markings or other evidence to indicate that it was a bearing tree is not substantial evidence. Any evidence that does not support Allen’s determination that he set the monument where he thought it should be has been summarily dismissed as unimportant

and meaningless by BLM and the majority. I cannot agree with either assessment. If there are good and valid reasons that the ties to natural objects do not match, those reasons must be stated. They cannot be found anywhere in the record. More evidence is necessary.

Common Corner of Sections 1, 2, 11, and 12,
T. 5 S., R. 92 W., 6th Principal Meridian

The next disputed corner discussed by the majority is the corner common to sections 1, 2, 11, and 12. Vagneur asserts that "there is no remaining evidence of the original" corner and argues that Allen did not properly reconstruct the original position.

This corner was set by Monroe in 1888. His survey notes describe his work and the corners as follows:

	N. between secs. 11 & 12.
15.00	Ascending
20.00	Top of sage mesa. Soil 2 nd rate.
28.00	Descending
40.00	Set sandstone 26 x 15 x 8. 15" in ground marked 1/4 on W face for 1/4 sec. cor. Raise mound of stone alongside. No trees near. Sage and sarvisbrush. Soil 1 st rate.
59.40	Branch of Dry Rifle creek course N 80° W
67.20	Branch of Dry Rifle creek course S 10° W[.] Branches unites about 8 [chains] SWesterly.
71.80	County road N.W.
80.00	Set sandstone 18 x 16 x 4 10" in ground marked with 5 notches on S. and one on E edges for cor. to secs 1.2.11.12. Raise mound of stone alongside. A cedar tree 14" diam bears S 5° W 91 [links] marked T 5 S. R 92 W S 11 BT. A cedar tree 12diam bears N 13° W

76 [links] marked T 5 S R 92 W Sec 2 BT[.]
Sage and sarvisbrush[.] Soil 1st rate.

(Monroe Field Notes at 251-53.)

Allen also ran his resurvey in a northerly direction from the corner common to sections 11, 12, 13, and 14 to establish this corner. The following excerpt outlines what Allen observed and did when remonumenting the corner common to sections 1, 2, 11, and 12:

The cor. of secs. 1, 2, 11, and 12, monumented with a cedar post, 3x3 ins., firmly set, projecting 15 ins. above the ground, mkd., with 1 groove on the N. and E. faces, and 5 grooves on the S. and W. faces. This position is supported by a plat prepared by Garfield Deputy County Surveyor P.C. Thurmond, for Joe Zarlingo, in 1915, which indicates a cedar post in place for the cor. of secs. 1, 2, 11, and 12. This plat is not filed in the Garfield County Records, but was located in the office of the former Garfield County Surveyor (Now called Scarrow and Walker Surverors in Glenwood Springs) on page 205 of a book of surveys prepared by the Garfield County Surveyors of the early 1900's. This monument is accepted as a careful and faithful perpetuation of the position of the original corner, from which the remains of the original bearing trees

A stump, 13 ins. diam., 4 ft. high, bears S. 16E W.,
110 [links] dist., mkd. with a B visible along with other
illegible scribe marks. (record: S. 5E W., 91 [links] dist.)

At the corner point

Set an aluminum post, 28 ins. long, 2 ½ ins. diam., in the ground, in a mound of stone, 2 ft. base, to top, with cap mkd.

T5S R92W
S 2 | S 1

S 11 | S 12
1993

from which locally established bearing objects

An iron rebar, e in. diam., firmly set, flush with the ground, bears S. 14° E., 32½ [links] dist.

A railroad spike, driven into the base of a wooden fence post, bears S. 87½° W., 5½ [links] dist.

Cor. is located in the S. right-of-way fence for County Road No. 226, 60 [links] S. of the center line.

(Allen Field Notes at 15-16.)

Allen expressly rejected what he identified as a "locally established corner" which

bears S. 42° 32' E., 23 ½ [links] dist., monumented with an iron rebar, e in. diam., firmly set, projecting 3 ins. above the ground. This point has been used as the cor. position by local surveyors. A Colorado Land Survey Monument Record is on file in the office of the Garfield County Clerk and Recorder. Adjacent landowners in all four sections have accepted this point as the cor. position. It is depicted as being the NE cor. of Parcel 1, Tract 2, identical with the NW cor. of Parcel No. 3, Tract 2, on the unrecorded plat shown on microfiche No. 70, of the miscellaneous plats, filed in the office of the Garfield Clerk and Recorder. It was established by person(s) unknown independent of the original or county surveyor records and is not utilized during the course of this survey.

From the same point, a juniper tree, 22 ins. diam., blazed on the W. face with no visible scribe marks, bears N. 54° 10' W., 6.31 [chains] dist. There is insufficient evidence at this location to determine if this tree was a part of the original survey record and it was not utilized during the course of this survey.

(Allen Field Notes at 16.)

This corner lacks the original monument but has sufficient other evidence to render an identification of its location reliable. One reliable accessory is enough to render it "existent" under the Survey Manual, § 5-5 at 130. In addition, the survey notes describe the additional evidence of the corner having been remonumented by the County Surveyor in the early 1900's. The Survey Manual provides that a local corner relied upon by the adjacent landowners may serve as the best remaining evidence of the

position of an original corner (Survey Manual, § 6-28 at 150), and, if there was no other evidence, it may have been proper to accept the corner actually rejected. A surveyor must consider all facts, and in this instance Allen found the combination of the cedar post used to remonument the corner, the 1915 survey notes of this remonumenting of the corner, and the evidence of the existence of the bearing tree, with a visible scribe marks support the conclusion that the position he chose was the actual location of the corner established by Monroe in 1888. I find sufficient evidence in the record to support that choice, and, if this were the only corner in question, I would concur with Judge Hughes' conclusion that the decision should be affirmed.

Quarter-Section Corner between Sections 1 and 2

The final corner addressed in the majority opinion is the quarter corner between sections 1 and 2. Monroe's 1888 field notes give the following description of how he surveyed the corner:

Now returning to the line between secs. 1 and 2[.] I find that at a distance of

80.30 from cor to secs. 1.2.11.12 intersect the N. [boundary] of [township] 28 [links] W of ____ reestablish cor to secs 1.2.35.36 Thence S 0° 12' W on a true line. Descending spur of mesa.

40.30 Set sandstone 16 x 12 x 4. 8" in ground marked $\frac{1}{4}$ on W face for $\frac{1}{4}$ sec. cor Raise mound of stone alongside A cedar tree 14" diam bears N 85° E 20 [links] marked $\frac{1}{4}$ S BT Soil 1st rate.

42.10 Dry gulch course S 70° W

49.70 grass valley ditch S 40° W

51.20 grass valley ditch N 70° E

58.50 " " " W

64.10 " " " E

79.90 " " " W

80.30 To cor of secs. 1.2.11.12

(Monroe Field Notes at 265-66.)

Allen accepted as a perpetuation of the quarter corner common to sections 1 and 2 a monument set by a registered surveyor not employed by the Cadastral Survey. When surveying the boundary between sections 1 and 2 Allen began at the corner of sections 1, 2, 11, and 12. The following are the survey notes pertinent to that boundary:

N. 6° 49' W., [between] secs. 1 and 2.

0.60 Garfield County Road No. 226, bears N. 80° E. and S. 80° W.

11.15 Grass Valley Irrigation Ditch, course S. 53° E.

15.50 Wide ridge line, bears E. and W.; continue N. across a draw, course W., crossing the Grass Valley Irrigation ditch twice.

46.49 Shallow dry gulch, course S. 50° W.

46.87 The $\frac{1}{4}$ sec. cor. of secs. 1 and 2, monumented with an iron post, 2½ ins. diam., firmly set, projecting 8 ins. above the ground, with brass cap mkd.

T5S R92W

2 | 1

16842

from which the original bearing tree

A forked juniper, 13 ins. diam., bears N. 85° E., 30 [links] dist. mkd. $\frac{1}{4}$ S BT.

There is no remaining evidence of the original cor. monument. This point was perpetuated by James Warren Sexton, P.L.S. No. 16842, and a Colorado Land Survey Monument Report was filed by Sexton in the office of the Garfield County Clerk and Recorder. This point is accepted as a careful and faithful perpetuation of the position of the original cor., from which reference monuments established by Sexton

A yellow plastic cap, mkd. HCS LS16842, nailed to a piñon tree, 10 ins. diam., bears S. $29\frac{1}{2}^{\circ}$ W., 30 [links] dist.

A yellow plastic cap, mkd. HCS LS16842, nailed to a juniper tree, 4 ins. diam., bears N. $75\frac{3}{4}^{\circ}$ W., 42 [links]. dist.

This cor. is located 10.54 [chains] North of the Grass Valley Irrigation Ditch, extending southwest and northwest from a bend in the ditch.

From this point, an iron rebar, e in. diam., firmly set, projecting 2 ins. above the ground, bears S. 18° E., $2\frac{1}{2}$ [links] dist. This is an unrecorded monument which did not fall at a recorded bearing and dist. from the original bearing tree and was not utilized during the course of this survey.

N. $9^{\circ} 24'$ E., beginning new measurement.

4.00 Fallen fence line, bears E. and W.

16.36 Point for the N 1/16th sec. cor. of secs. 1 and 2.

Set an aluminum post, 28 ins. long, $2\frac{1}{2}$ ins. diam., 22 ins. in the ground, in a mound of stone, 3 ft. base, to top, with cap mkd.

N 1/16
S2 | S1
1992

from which

A juniper, 6 ins. diam., bears N. 5° E., 39 [links] dist., mkd. X BT

A multi-trunked juniper, 14 ins. diam., bears S. 55° E., $44\frac{1}{2}$ [links] dist., mkd. N 1/16 S1 BT.

Cor. is located on the N. edge of a shallow gulch, course S. 50° E.

32.97 The cor. of secs. 1, 2, 35, and 36, N. bdy. of the [township].

(Allen Field Notes at 18-19.)

Again, an examination of the descriptions in Allen's field notes discloses obvious discrepancies between his calls and distances to natural monuments and those set out in Monroe's field notes. The most glaring difference is that 6 chains (396 feet) is a large difference in a one mile traverse. This difference is unexplained.^{1/} According to Monroe's field notes, when he set the quarter corner, he measured half way between the two section corners he had previously set. I find it significant that the corner set (or accepted) by Allen lies at the intersection of the projection of the line running north from the southeast corner and a line running south from the northeast corner of section 2, with a pronounced angle ($15^{\circ} 4'$ deviation from a straight line) at the quarter corner. There is no explanation regarding how this might have happened. This is significant. If Allen had traversed in a straight line between the two corners, the quarter corner would be in a position much closer to that accepted by the parties for some years, and the distance discrepancy would be much smaller. The most troubling aspect of these factors is the lack of any mention of them or explanation for them in the field notes. Again, there is also no evidence of any comparison of the distances to the physical features crossed during the course of the original survey or any attempt to explain those differences.

Although it is an important consideration, the notes do not describe what type of monument was found. The monument described as having been reset in 1915 was a wooden post. Sexton apparently found no remnants of a wooden post monument. Why was his survey accepted and others rejected? There is no explanation.^{2/}

In Crow Indian Agency, 78 IBLA 7 (1983), the Board found that the evidence in the record that a marked stone had been moved supported a conclusion that it should be rejected. There is a similar question in this case regarding the authenticity of the blazed tree. If someone took the trouble to move the stone, why would they not have destroyed the bearing trees? Said another way, if someone was moving monuments, is there not a question whether the bearing tree was falsified as well? There is no question that a

^{1/} The majority renders this discrepancy de minimus by relegating it to a footnote, but offer no explanation for it.

^{2/} The majority is apparently untroubled by the fact that this private survey was accepted as accurate while a number of others were rejected because they had not been "conducted in accordance with prescribed methods." There is no evidence in the record regarding how the Sexton survey or any of the rejected surveys were conducted so as to afford an understanding of when a survey is acceptable because it was conducted in accordance with prescribed methods and when it is not.

number of surveyors did not accept the bearing tree, yet the point they deemed to be the location of the corner was summarily rejected with a paucity of explanation. Did those surveyors reject the bearing tree, or just not find it? The stated reason for rejecting their placement of the corner was that the other surveyors did not follow the prescribed survey methods, but the record contains no explanation of how the other surveyors failed to follow prescribed methods, or how their failure rendered their surveys invalid. If the reason that their surveys were rejected was that the other surveyors used proportional measurement, rather than the location of the bearing tree, the reason that they erroneously failed to use the bearing tree should be addressed. Did they not find it, or did they find it and reject it? If it is reasonable to reject the bearing tree, as similar accessories were rejected by Allen, it would appear that proportional measurement would be the proper method for remonumenting the corner. I have not failed to notice that if the other three surveyors' work had been accepted, the corner would actually be in a more logical position, and the distance would be much more harmonious with those set out in the original and 1911 survey notes.

I find this lack of a reasonable explanation for rejecting the other surveyors' conclusions and the failure to discuss the relationship of the natural objects crossed with those crossed in the original survey most disturbing.

To make a logical comparison of the descriptions found in the survey notes for the two surveys, and set out in detail above, one must "reverse" one of the two descriptions. For the purpose of this analysis I have reversed the 1888 survey. The "*" at the distance indicates a distance in the 1994 survey notes and the "#" indicates a distance noted in the 1888 survey notes.

To make this comparison, I begin at the corner common to Secs. 1, 2, 11 & 12:

80.30 Thence N 0° 12' E.

*

Thence N. 6° 49' W.

*# 0.60 grass valley ditch W

Garfield County Road No. 226

* 11.15

Grass valley irrigation ditch Course S.
50° E

* 15.50

Wide ridge line, bears E. and W.;
continue N. across a draw, course W.,
crossing the Grass Valley Irrigation
ditch twice.

- # 16.20 grass valley ditch E
- # 21.80 grass valley ditch W
- # 29.10 grass valley ditch N 70° E
- # 30.60 grass valley ditch S 40° W
- # 38.20 Dry gulch course S 70 W
- # 40.00 Set sandstone 16 x 12 x 4. 8"
in ground marked $\frac{1}{4}$ on W face
for $\frac{1}{4}$ sec. cor Raise mound
of stone alongside A cedar
tree 14" diam bears N 85°
E 20[links] marked $\frac{1}{4}$ S BT

- * 46.49 Shallow dry gulch course S 50° W.
- * 46.87 the $\frac{1}{4}$ sec. cor. of secs. 1 and 2 * * *
- * 50.87 Fallen fence line, bears E. and W.
- * 63.23 The N 1/16 sec. cor. of secs. 1 and 2
- * 79.84 The cor. of secs. 1, 2, 35, and 36, N
bdy. of the Tp.

- # 80.30 reestablish cor to secs 1.2.35.36

The majority also addresses these discrepancies, but does so in an unusual way. First they accept the fact that there are glaring discrepancies. Then they set out the Survey Manual “rule” concerning the use of topography when attempting to restore missing corners. Then they conclude that this rule supports their conclusion. I disagree with the majority because I find an aspect of this “rule” that they make no mention of to be controlling. There must be some evidence that the comparison was made. If the Survey Manual finds it sufficiently important to consider any variances in calls to natural objects that it sets out a “rule” regarding how to undertake the comparison, it is important that the record demonstrate that this test was actually applied and provide a statement of the conclusions reached after applying the “test.” One cannot justify a failure to set out and explain a finding which may or may not have been made in

conformance with the survey standards when there is absolutely no evidence that the standard had been applied. The failure to set out the evidence showing that the proper tests were actually applied raises a sufficient issue of fact to call for a hearing.

As further support for ignoring the discrepancies in the calls to natural monuments, the majority concludes that the natural objects described in the survey notes do not “focus on a definite, small area.” I must assume that the majority believes that a notation in the survey notes indicating where the section line crosses a road, a ditch, and the bottom of a dry gulch are not sufficiently definite or small in area to warrant consideration.

In conclusion, I find, in the context of the evidence before us in this case, the following statement in Public Land Surveying, A Case Book prepared by the Cadastral Survey in 1975 to be very helpful guidance when considering whether the decision is supported by the record:

When restoring an obliterated corner or reestablishing a lost corner, an attempt should be made to harmonize the restorative process with the methods used in the original survey (following the footsteps). The following points out some factors which should be considered in harmonizing the restorative process with existing (the original) and concurrent surveys:

- A. Is the end product in harmony with the original plat?
- B. Are the corner points, length of lines and bearing of lines in harmony with the original and each other?
- C. Is there any harmony between the topographic calls in the retracement and those of the record?
- D. Are the evidences which are nearest the particular corner in question given the greatest weight and are they harmonious with each other?
- E. Is the principle of proportionate measurement used which will most nearly harmonize surveying practices with legal and equitable considerations in determining boundaries?
- F. Is there harmony between the end product and the evident faithfulness of the original survey.

A position based upon collateral evidence should be duly supported, generally through proper relation (harmoniously related) to known corners, and in agreement with field notes regarding distances to natural objects, stream crossings, line trees, and off line tree blazes, etc. or unquestionable testimony.

(Public Land Surveying, A Case Book at A1-5.)

There is little harmony between the location of the corner common to sections 34, 35, 2, and 3, and the quarter corner common to sections 1 and 2, and Allen's placement of those corners. The corner points, length of lines, and bearing of lines established by Allen are not in harmony with the original survey. There is no discussion of the failure to find evidence which should be found near those corners, nor was any supportable basis given for using one set of evidence rather than another, and it is therefore impossible to determine whether the evidence has been given proper weight or is in harmony with the conclusions Allen reached. Most important, the failure to present a supportable record gives serious rise to substantial doubt regarding whether the resurvey was faithful to the original survey. There are just too many significant unresolved factual issues which cannot be resolved by looking at record now before this Board.

Under 43 CFR 4.415, the Board has the discretionary authority to refer a case to an Administrative Law Judge for a hearing. When there are significant unresolved factual or legal issues which cannot be determined based on the record, this Board can exercise its discretion and refer the case to the Hearings Division, Office of Hearings and Appeals, for a hearing on those questions. Sidney Dowton, 154 IBLA 291 (2001); see Yates Petroleum Corp., 131 IBLA 230, 235 (1994); Jerome P. McHugh & Associates (On Reconsideration), 117 IBLA 303, 307 (1991); Norman G. Lavery, 96 IBLA 294, 299 (1987); Woods Petroleum Co., 86 IBLA 46, 55 (1985).

This decision should be set aside and referred for a hearing on the matter of whether the dependent resurvey conducted under Group No. 1030 and assignment instructions dated September 19, 1992, properly restored the original corner common to sections 34 and 35, T. 4 S. and sections 2 and 3, T. 5 S., R. 92 W., Sixth Principal Meridian, and the quarter corner between sections 1 and 2, T. 5 S., R. 92 W., Sixth Principal Meridian, Garfield County, Colorado. In doing so, the Administrative Law

Judge should be afforded sufficient latitude to accept testimony and evidence and make a determination regarding the resurvey of the other corners in the area.

R.W. Mullen
Administrative Judge